

**Final Order Denying Refund: 01-20181840R
Individual Income Tax
For the Year 2017**

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund.

HOLDING

The Department was unable to agree that Individual established he was not responsible for additional tax attributable to joint income tax returns purportedly filed by his estranged wife.

I. Individual Income Tax - Refund Offset.

Authority: IC § 6-3-1-3.5(a); IC § 6-3-2-1(a); IC § 6-3-2-2(a); IC § 6-8.1-5-1(c); I.R.C. § 62; *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer argues that the Indiana Department of Revenue erred when it assessed Taxpayer additional Indiana income tax and then satisfied that liability by offsetting his claimed 2017 income tax refund.

STATEMENT OF FACTS

Taxpayer is a former Indiana resident now apparently living at an out-of-state location. The Indiana Department of Revenue ("Department") determined that Taxpayer owed additional income tax for 2015 and 2016. The Department satisfied the liability by offsetting a purported 2017 refund. Taxpayer disagreed with the decision on the ground that he did not owe Indiana taxes and submitted a protest to that effect. In his protest submission form, Taxpayer asked for a "Final determination without a hearing." After reviewing the documentation and protest submitted by Taxpayer, this Final Order Denying Refund results.

I. Individual Income Tax - Refund Offset.

DISCUSSION

Taxpayer argues that he is entitled to his claimed 2017 individual income tax refund and that the Department was incorrect when it determined that Taxpayer owed additional income tax for prior years.

Since the claimed refund was offset against the Department's prior assessment of additional income tax and penalties, it is the Taxpayer's responsibility to establish that the Department erred when it denied the 2017 refund. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Thus, any taxpayer challenging an assessment is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

Indiana imposes a tax "on the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax. For Indiana income tax purposes, the presumption is that taxpayers file their federal income tax returns as required pursuant to the Internal Revenue Code. In computing what is considered the taxpayers' Indiana income tax, IC § 6-3-1-3.5(a) refers to the Internal Revenue Code. IC § 6-3-1-3.5(a) states that - with certain modifications specific

to Indiana law - I.R.C. § 62 defines "adjusted gross income" for Indiana taxpayers.

In this case, Taxpayer states that he could not have owed Indiana tax in the years prior to 2017. Taxpayer states that he filed his last Indiana return in 2011. Taxpayer explains that he separated from his wife in 2012 and that he was imprisoned at an out-of-state location and thereafter at an Indiana facility during 2012 through 2016. Taxpayer states that his estranged wife - still living in their former Indiana home - must have filed joint tax 2012 through 2016 returns without his permission.

Taxpayer states that he previously supplied records of his imprisonment, temporary out-of-state and in-state addresses, parole records, records of his temporary stay at an out-of-state hotel, and records of his brief stay at an out-of-state rooming house. However, none of these records were provided at the time Taxpayer submitted his protest. In the absence of any substantive information in support of Taxpayer's argument that he did not owe Indiana tax and that he is entitled to a 2017 income refund, the Department must respectfully deny Taxpayer's protest. Taxpayer failed to meet his statutory burden under IC § 6-8.1-5-1(c) of establishing that the prior assessment of additional tax was "wrong" and that - as a result - he is entitled to the 2017 refund.

FINDING

Taxpayer's protest is respectfully denied.

August 31, 2018

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